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STATUTORY FIXING OF WEIGHT OF BREAD HELD INVALID

The 1921 session of the Nebraska Legislature enacted a statute prohibiting offering for sale loaves of bread of weights other than ½-lb., 1-lb., 1½ lbs., or exact multiples of 1-lb., but allowing a tolerance in excess of the specified weights at the rate of 2 ounces per pound, and requiring that the specified weight shall be the average weight of not less than 25 loaves, and that such average shall not be more than the maximum nor less than the minimum prescribed. Suit was brought by Jay Burns Baking Company and others against the Governor and the Secretary of the Department of Agriculture of the State to restrain the enforcement of the act on the ground, among others, that it is repugnant to the due process clause of the Fourteenth Amendment. The State Supreme Court, in 108 Neb. 674, 189 N. W. 383, 26 A. L. R. 24, upheld the validity of the statute and affirmed a judgment of dismissal. The case then went on writ of error to the Supreme Court of the United States, which reversed the judgment (case reported in 44 Sup. Ct. 412), holding that the provision that the average weights shall not exceed the minimum fixed, is not necessary for the protection of purchasers against imposition and fraud by short weights, is not calculated to effectuate that purpose, and subjects bakers and sellers of bread to restrictions which are unreasonable and arbitrary and hence repugnant to the Fourteenth Amendment.

There was a dissenting opinion by Mr. Justice Brandeis, with whom Mr. Justice Holmes concurred.

In its opinion the State Supreme Court said that the object of the maximum weight provision is to prevent a loaf of one standard from being increased in size until it can be readily sold for a loaf of a larger standard. It declared that the test of validity is reasonableness, and went on to say:

"The statutory margin or tolerance being 2 ounces to the pound, can bakers, for example, make a loaf 18 ounces in weight that will weigh not less than 16 ounces 24 hours after it is baked? The tests and proofs on behalf of the State tend to show that the regulation is reasonable and can be observed at all times. (In most of these tests, wrapped loaves were used.) It is fairly inferable from the evidence adduced by plaintiffs that compliance with the regulation is practicable most of the time, but that, tested by their experiments as made, there are periods when the operation of natural laws will prevent compliance with legislative requirements. There are a number of reasons, however, why the tests made to prove unreasonableness should not be accepted as conclusive. If correctly understood these tests were made with bread manufactured in the regular course of business, without any attempts to change ingredients or processes or to retard evaporation of moisture in loaves by the use of wax paper or other means."

The United States Supreme Court declared that undoubtedly the police power of the State may be exerted to protect purchasers from imposition by sale of short weight loaves. Many laws have been passed for that purpose. But a State may not, under the guise of protecting the people, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them. We quote at some length from the opinion of the United States Supreme Court as follows:

"The act does not make it unlawful to sell individual loaves weighing more or less than the standard weights respectively. Loaves of any weight may be sold

without violation of the act, if the average weight of not less than 25 does not exceed the permitted maximum or fall short of the specified nominal weights during 24 hours after baking. Undoubtedly, very few private consumers purchase at one time as many as 25 loaves of the same standard size or unit. And it is admitted that the sale of a lesser number not within the permitted tolerance does not constitute an offense. Plaintiffs in error do not claim that it is impossible to make loaves which for at least 24 hours after baking will weigh not less than the specified minimum weights, but they insist that the difference permitted by the act between the weight of loaves when taken from the oven and their weight 24 hours later is too small, and that it is impossible for bakers to carry on their business without sometimes exceeding the maximum or falling short of the minimum average weights. Any loaves of the same unit at any time on hand during 24 hours after baking may be selected to make up the 25 or more to be weighed in order to test compliance with the act. Therefore, if only a small percentage of the daily output of the loaves in large bakeries shall exceed the maximum when taken from the oven or fall below the minimum weight within 24 hours, it will always be possible to make up lots of 25 or more loaves whose average weight will be above or below the prescribed limits.

"The parties introduced much evidence on the question whether it is possible for bakers to comply with the law. A number of things contribute to produce unavoidable variations in the weights of loaves at the time of and after baking. The water content of wheat, of flour, of dough, and of bread immediately after baking varies substantially and is beyond the control of bakers. Gluten is an important element in flour, and flour rich in gluten requires the addition of more water in bread-making and makes better bread than does flour of low or inferior gluten content. Exact weights and measurements used in dough-making cannot be attained. Losses in weight while dough is being mixed, during fermentation, and while the bread is in the oven vary, and cannot be avoided or completely controlled. No hard or fast rule or formula is followed in break-making. There are many variable elements. Bread made from good flour loses more weight by evaporation of moisture after baking than does bread made from inferior flours. Defendants' tests were made principally with loaves which were wrapped so as to retard evaporation; and it was shown that by such wrapping the prohibited variations in weight may be avoided. On the other hand, the evidence clearly establishes that there are periods when evaporation under ordinary conditions of temperature and humidity prevailing in Nebraska exceed the prescribed tolerance and make it impossible to comply with the law without wrapping the loaves or employing other artificial means to prevent or retard evaporation. And the evidence indicates that these periods are of such frequency and duration that the enforcement of the penalities prescribed for violations would be an intolerable burden upon bakers of bread for sale. The tests which were described in the evidence and referred to in the opinion are not discredited because 'made with bread manufactured in the regular course of business.' The reasonableness of the regulation complained of fairly may be measured by the variations in weight of bread so made. The act does not require bakers to select ingredients or to apply processes in the making of bread that will result in a product that will not vary in weight during 24 hours after baking as much as does bread properly made by the use of good wheat flour. As indicated by the opinion of the State Supreme Court, ingredients selected to lessen evaporation after baking would make an inferior and unsalable bread. It would be unreason-

able to compel the making of such a product or to prevent making of good bread in order to comply with the provisions of the act fixing maximum weights. The act is not a sanitary measure. It does not relate to the preservation of bread in transportation or in the market; and it applies equally whether the bread is sold at the bakeries or is shipped to distant places for sale. Admittedly, the provision in question is concerned with weights only. The act does not regulate moisture content or require evaporation to be retarded by the wrapping of loaves or otherwise. The uncontradicted evidence shows that there is a strong demand by consumers for unwrapped bread. It is a wholesome article of food, and plaintiffs in error and other bakers have a right to furnish it to their customers. The lessening of weight of bread by evaporation during 24 hours after baking does not reduce its food value. It would be unreasonable to prevent unwrapped bread being furnished to those who want it in order technically to comply with a weight regulation and to keep within limits of tolerance so narrow as to require that ordinary evaporation be retarded by wrapping or other artificial means. It having been shown that during some periods in Nebraska bread made in a proper and usual way will vary in weight more than at the rate of 2 ounces to the pound during 24 hours after baking, the enforcement of the provision necessarily will have the effect of prohibiting the sale of unwrapped loaves when evaporation exceeds the tolerance.

"No question is presented as to the power of the state to make regulations safeguarding or affecting the qualities of bread. Concretely, the sole purpose of fixing the maximum weights, as held by the Supreme Court, is to prevent the sale of a loaf weighing anything over 9 ounces for a half-pound loaf, and the sale of a loaf weighing anything over 18 ounces for a pound loaf, and so on. The permitted tolerance, as to the half-pound loaf, gives the baker the benefit of only 1 ounce out of the spread of 8 ounces, and as to the pound loaf the benefit of only 2 ounces out of a like spread. There is no evidence in support of the thought that purchasers have been or are likely to be induced to take a 9½ or a 10-ounce loaf for a pound(16-ounce) loaf, or an 18½ or a 19-ounce loaf for a pound and a half (24-ounce) loaf, and it is contrary to common experience and unreasonable to assume that there could be any danger of such deception. Imposition through short weights readily could have been dealt with in a direct and effective way. For the reasons stated, we conclude that the provision, that the average weights shall not exceed the maximums fixed, is not necessary for the protection of purchasers against imposition and fraud by short weights and is not calculated to effectuate that purpose, and that it subjects bakers and sellers of bread to restrictions which are essentially unreasonable and arbitrary, and is therefore repugnant to the Fourteenth Amendment."

NOTES OF IMPORTANT DECISIONS.

DEATH FROM TYPHOID FROM DRINKING POLLUTED WATER AS WITHIN ACCIDENT POLICY.—The Supreme Court of Illinois, in the case of Christ v. Pacific Mut. Life Ins. Co., 144 N. E. 161, holds that where a railroad employee drank water from pipes intended to carry drinking water, but which in fact contained polluted water due to a defective gate valve intended to keep the polluted water separate from the drinking water, with the result that he became ill with typhoid and died, death was caused by "external, violent and accidental means" within an insurance policy.

The Court stated in part: "Typhoid fever is a disease, and, as stipulated, it is idiopathic—that is, a primary disease, not preceded and occasioned by any other disease. It is due to a specific germ, which is ordinarily taken into the system with food or drink. A death by typhoid fever cannot be regarded as accidental unless it appears that the disease itself was occasioned by accidental means. The means by which disease is acquired being the entrance of the

typhoid bacilli into the system, if the means of such entrance are accidental the resulting typhoid fever and its fatal effect may also be said to be accidental.

"Typhoid fever is always a disease, but it does not follow, as is argued for the plaintiff in error, that the manner in which the disease is contracted is immaterial, or, as is assumed in the argument, that there was no bodily injury. Disease causes bodily injury when it prevents the organs of the body from performing their functions and finally produces death. An accident causing a disease which produces these results is the proximate cause of these results. Death from blood poisoning following an accident is the direct or proximate result of the accident."

In Lewis v. Ocean Accident Corp., 224 N. Y. 18, 120 N. E. 56, 7 A. L. R. 1129, the insured punctured an ordinary pimple on his lip with a pin, the lip became infected, and his death followed in a few days from inflammation of the brain, caused by the infection. The court said the puncture of itself was harmless; that the infection unexpectedly caused "was something unforeseen, unexpected, extraordinary, and unlooked-for mishap, and so an accident." Two other cases grew out of this same occurrence (Interstate Business Men's Accident Ass'n v. Lewis, 257 Fed. 241, 168 C. C. A. 325; Iowa State Traveling Men's Ass'n v. Lewis, 257 Fed. 552, 168 C. C. A. 536), in which judgments recovered upon accident policies were affirmed.

In Aetna Life Ins Co. v. Portland Gas Co., 229 Fed. 552, 144 C. C. A. 12, L. R. A. 1916D, 1027, a suit was brought upon an employer's liability policy by which the insurance company agreed to indemnify the insured against damages on account of bodily injuries or death accidentally suffered by its employees. Certain employees of the assured in the course of their work contracted typhoid fever from the water furnished to them by the employer, on account of which the employer was compelled to pay damages to such employees. Action was brought to recover the amount of the damages which the employer was compelled to pay, and the only question presented for review was whether the harm done the workmen constituted a bodily injury accidentally received or suffered by them within the meaning of the policy. The argument was made that there was no accident, but that in drinking the water the workmen were only satisfying an actual want, but it was held that there was an accident which occurred by reason of the unexpected fact that the water contained typhoid germs, the court holding that there was no substantial distinction between the case before it and the case which would have been presented if the water the employees had drunk had contained virulent poisons. The court cited and relied upon the case of Hood & Sons v. Maryland Casualty Co., 206 Mass., 223, 92 N. E. 329, 30 L. R. A. (N. S.) 1192, 138 Am. St. Rep. 379, which was also a suit upon an employer's liability policy. The action was to recover damages which the employer had been compelled to pay to a hostler employed in its stables who had the care of horses which were afterward found to have been suffering from glanders and were killed. Barry, the employee, was directed to assist in cleaning up the stalls, but no notice was given to him that the horses had suffered from glanders. He was subsequently attacked by the disease, and brought an action against the employer for negligently putting him to work on the horses and exposing him to the disease. He recovered a judgment, and the employer brought suit against the insurance Company and recovered the amount which it was compelled to pay. It was held that the disease from which the employee suffered was due to an accident, and that he sustained bodily injuries accidentally suffered. It was said:

"The intention is, as has been said, to afford full protection and indemnity to the assured. Any accident that causes bodily injury in any way is included. Bodily injury is more commonly associated perhaps with physical force of some sort, but in the absence of anything in the policy limiting it to that we do not see how or why it can or should be so restricted. A liability growing out of an accident which results in infecting the workman with a loathsome and dangerous disease and thereby causes him great and perhaps lasting . . . injury, would seem to be as much within the spirit and intent of the contract as if the injury had been caused by a blow or some other equally obvious manifestation of force."

In Vennen v. New Dells Lumber Co., 161 Wis. 370, 154 N. W. 640, L. R. A. 1916A, 273, Ann. Cas. 1918B, 293, water for the boilers was carried in a different set of pipes from those in which water for drinking by the employees was carried, but the water from the two sets of pipes became mixed, and the deceased by reason thereof drank the polluted water, which caused him to have typhoid fever and die. In an action under the Wisconsin Compensation Act, which provided for compensation where the injury was proximately caused by accident, it was held that the employee had sustained an accidental injury. It was an accident that the insured drank water containing typhoid bacilli as much as if he had drunk from a glass containing carbolic acid supposing it was clear water. The agency causing the accident—the bacilli—was external.

In Paul v. Travelers' Ins. Co., 112 N. Y. 472, 20 N. E. 347, 3 L. R. A. 443 (a case in which

death was caused by inhaling gas), the New York Court of Appeals held that the gas in the atmosphere, as an external cause, was a violent agency in the sense that it worked on the intestate so as to cause his death, and the fact that death was the result of accident, or is unnatural, imports an external and violent agency as the cause.

STATE CANNOT REGULATE PRICE OF GAS CHARGED BY INTERSTATE PIPE LINE COMPANY.—The case of State of Missouri ex rel. v. Kansas Natural Gas Co., 44 Sup. Ct. 514, and two other cases consolidated with it, hold that a State Public Utilities Commission cannot regulate wholesale prices chargeable to local distributing companies, operating under state franchises for gas, by one transporting gas in interstate commerce by pipe line and exercising no state franchise right, though Congress has not acted.

"The business of the Supply Company, with an exception not important here, is wholly interstate. The sales and deliveries are in large quantities not for consumption, but for resale to consumers. There is no relation of agency between the Supply Company and the distributing companies, or other relation except that of seller and buyer (Public Utilities Comm. v. Landon, 249 U. S. 236, 244-245, 39 Sup. Ct. 268, 63 L. Ed. 577), and the interest of the former in the commodity ends with its delivery to the latter, to which title and control thereupon pass absolutely. The question is therefore presented in its simplest form, and, if the claim of state power be upheld, it is difficult to see how it could be denied in any case of interstate transportation and sale of gas. Both federal courts denied the power. The state court conceded that the business was interstate and subject to federal control, but rested its decision the other way upon the fact that Congress had not acted in the matter and that, in the absence of such action, it was within the regulating power of the state.

The question is controlled by familiar principles. Transportation of gas from one state to another is interstate commerce, and the sale and delivery of it to the local distributing companies is a part of such commerce. In Public Utilities Comm. v. Landon, supra, at page 245 (39 Sup. Ct. 269) this court said:

"That the transportation of gas through pipe lines from one state to another is interstate commerce may not be doubted; also, it is clear that as part of such commerce the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the state."

REPORT OF VISIT TO LONDON

BY STAFF CORRESPONDENT

The purpose of the visit to London, as expressed in many speeches before the Bar Association, was education—a broadening of American knowledge of both ancient and modern England. It turned out to be one of splendid entertainment and diversion as well.

If the success of an enterprise may be measured by the absence of friction and the presence of a well ordered program, perfectly executed, one is justified in voting in the affirmative regarding the American visit to London. Those persons acquainted with the thoughtful and methodical habits and hospitality of the cultured Englishman have no surprise awaiting them; others were deeply gratified.

The average mind turns readily to the material where questions of comfort play an important part in an enterprise. The committee in charge had so well performed its duty with reference to transportation that the voyage on the three chartered ships of the Cunard Line was one of pleasure in itself. The pleasures and benefits derived from close association with some of the most splendid and eredite people in the world needs no comment and that measure may be used with a sense of conservatism in describing the American and the English Bench and Bar. The American judges and lawyers were at their best; were sober-minded and deeply thoughtful. One could not help observing the impression that they were going to visit a shrine, the home of the Common Law that they had studied and the spirit of which they wished thoroughly to understand. They were seeking inspection instead of entertainment or diversion. The conversation on the boat tended towards the biography of Blackstone and Hale and the law givers and historians. To this end careful study was given to the many maps that had been prepared by our thoughtful English hosts.

These greatly facilitated prompt and beneficial visits in London and its environs, prevented much hesitation and doubt and saved a great deal of valuable time. There was no observable seasickness. The gigantic size of the ships gave assurance against anything but a very rough and stormy sea which was not encountered and one soon became accustomed to periodic rains in London and provided against them.

The boats carrying the lawyers arrived at different English ports on Friday and Saturday, July 18th and 19th. The "Berengaria," on which was the headquarters and the officers including the Hughes, arrived at Southampton, Saturday morning, July 19th, at daybreak, There was no hurry. The first special train followed by two others, was boarded without hurry or worry and arrived in London at Victoria Station at ten o'clock, where it was met by a special committee of English lawyers who paid their respects to President Hughes and the other officials of the Association, extending to them a genuine welcome to England. It was the first appearance of the silk hat, cutaway coat and cane that soon became as common as necessary. Headquarters were established at Hotel Cecil on The Strand with the regular officers in charge assisted by several very competent English girls. A few doors up the corridor the English had established an office with a staff of about twenty. The thoroughness of English organization was everywhere apparent. It was not necessary to know what one needed in order to enquire for it. Suitable signs designated the various things that the American visitor ought to know, where he should go and what entertainment would be provided for him. A beautifully engraved card of invitation and a gold button or badge proved an open sesame and the former a guide. Many of these invitations were artistic gems, that will be treasured as souvenirs. This went so far as to supply information regarding tours on the Continent, in Wales, Scotland and Ireland and the attendant outlay of time and expense.

Saturday afternoon was devoted largely to shopping, because many members had not equipped themselves with silk hats, cutaway coats, walking sticks and gloves. They would have been marked men without them. These they thought could be acquired in London with less trouble than would have been incident to transporting them across the ocean. The result was that Sunday morning found the American contingent equipped to the last sartorial detail with a few exceptions.

The first item on the official program were services Sunday morning, July 20th, in Westminster Abbey. Although it would appear that the entire American and Canadian delegation and many Englishmen were present, all visitors seemed to have been accommodated. The second event of real significance was an official welcome by the English lawyers and the Canadian Bar Association on Monday, July 21st, at ten o'clock at Westminster Hall, erected by William Rufus. On behalf of the hosts, addresses of welcome were made by the Lord High Chancellor (Viscount Haldane), Sir James Aiken, President of the Canadian Bar, the Attorney-General of England and the Chairman of the Law Society (The Solicitors). On behalf of America, responses were made by Secretary of State Hughes, and we wish here to refer to him as President Hughes of the American Bar Association, and Mr. Justice Sutherland of the Supreme Court. The Americans were delighted with their speakers and felt proud of the dignified and wholesome manner in which America's "best foot had been put forward." It is well to say here that throughout the visit the American speakers did credit to their country.

Monday afternoon, between four and seven, Lord and Lady Phillimore's Garden Party was well attended. It afforded an unusual opportunity for the renewal of old acquaintances between English and

American lawyers and the making of many new ones. It is well to interpolate here that the slight showers every now and then were not surprising to the English and the Americans soon became well acquainted with them and provided against them.

On Monday night there were dinners at the Middle Temple, the Inner Temple, Gray's Inn and Lincoln's Inn. In order to entertain the entire party it was necessary to duplicate these dinners on Tuesday night. The guests would arrive at seven-fifteen; the dinner commence at seven-thirty sharp and was always over by ten. The English are noted for briefness in social as well as legal events.

On Tuesday afternoon, from four to six, Ambassador Kellogg received at Crewe House, which is the present home of the Ambassador. The attendance was very large. The Ambassador, having been a President of the Bar Association, felt at home with the guests.

Wednesday was probably the fullest day. It commenced with the unveiling of the Blackstone Memorial by Hon. George W. Wickersham in the Main Hall of the Royal Courts of Justice on The Strand, at three p. m. The fear of rain caused the sudden change of program from the garden where the monument will eventually be erected. The speech of presentation and acceptance were well received and the event was well attended. Immediately afterwards the guests scattered through the gardens of Grey's Inn and Lincoln's Inn upon invitation. These Inns are on the opposite side of the street from the Middle Temple and the Inner Temple. The American visitors showed a keen interest in all questions of history in connection with these two ancient institutions. Here in Lincoln's Inn was shown the original book of Blackstone, written in what appeared to be Norman-French and Latin, with words of English here and there. One desiring to learn exactly what was seen would do well to acquire at a very small price one or two of the several books published on the subject. The small outlay would be well placed. The English took pains to supply these things. Both the Middle and Inner Temples and The Temple Church were always open to visitors with uniformed guides at one's disposal.

At six-thirty sharp the dinner commenced in Guildhall. Several pages would be necessary to properly depict these mediaeval scenes. About fifty lawyers were selected to be personally presented, it being quite impossible for him to meet all during the brief time at command. The roll of the drum and the blare of the trumpet would announce the arrival of the visitor, whose name would be called in loud tones so as to be heard all over the vast hall, whereupon he would advance through its entire length between rows of persons who had been seated in advance, until he reached the Lord Mayor on a dais at the end of the hall. There he made his most profound bow; shook hands with his Excellency, adorned in all his gold, glittering ornaments and splendor, supported on either side by a sheriff and an under-sheriff and many bewigged attendants suitably posted on the platform. The visitor then stepped to one side into the waiting line until the fifty persons selected for presentation had appeared. It is interesting to note that all of the Americans were announced as "The Honorable." The refreshment part of the dinner was promptly concluded, regardless of its completeness and sumptiousness in every detail. English banquets move like a well oiled machine. The speaking commenced with a short opening address of welcome by the Lord Mayor who announced that the civic department of Government wished to participate, as well as the judicial. In true English style he then announced at one time the names of the different speakers. Subsequently they were called upon in turn by an announcing officer who, in a stentorian voice, after

the blare of bugles has commanded attention, demanded that the diners should "Listen to the recitation of the Honorable So and So." While Mr. Hughes had made a success at the formal reception on Monday he surpassed his previous effort in his Guildhall speech. He was happy in his utterances, buoyant in his spirit and resonant in voice. His demeanor and presence called for confidence in what he was saying as well as respect for the speaker. He was followed by Mr. Justice Sanford of the United States Supreme Court, whose address will go down as a gem. This splendid jurist measured well up to the supreme test of his active life. Incidentally, he responded in French at the Paris meeting. Mr. Hughes having been meticulously careful to refer to himself as the President of the American Bar Association and to mention that amongst the guests present was the American Ambassador, he tactfully freed himself from International questions. The Lord High Chancellor very gracefully accentuated the distinction. Frank Kellog, an Ex-President of the American Bar Association, did full justice to the historic post of Ambassador to the Court of St. James even under these trying circumstances. Sir James Aikens spoke for Canada and impressed upon the audience the friendship existing between America and Canada and the contentment of each peoples with their respective form of governments and emphasized with great force the determination of Canada to remain in the British Union. His sentiments in this regard are well known and were highly applauded He made a very eloquent and able address. Mr. Justice Chishom preceded him in splendid style. The English speakers were all very happy if very deliberate. An Englishman refuses to become excited. They have a fine way of speaking, in a conversational tone, with an articulation that adds to acoustical properties of a room. Woodrow Wilson spoke much after their style, but without certain attractive mannerisms and accents.

On the same evening, from eight-thirty until twelve o'clock, there was a reception at the University of London which was attended by a great many lawyers. Obviously those who were so fortunate as to attend the Guildhall dinner were deprived of that pleasure.

Thursday was a day of all days with the wives of the members. It was the King's Garden Party at Buckingham Palace from four to six-thirty p. m. It will go down in history as one of the most democratic proceedings that ever occurred under the eaves of that famous Palace. Every lawyer and judge with his wife and daughter had obtained an invitation and were scattered over the vast velvety lawn like an army. About fifty had been selected to be formally presented to His Majesty and the Queen, who stood under a canopy, His Majesty with an umbrella on his left arm. The reception was not unlike those held at the White House. On his way to the Palace across the garden the King was informally spoken to by a substantial number of lawyers and their wives. He appeared to relish confidence like this and showed it by his demeanor. The Prince of Wales moved freely about amongst the people presented to the visitors by some friend. He seemed to enjoy the lack of formality and in fact lived up to his reputation in that respect. Probably no more popular Prince ever lived.

The next event of importance, on account of the location of the event, was the reception at the Palace at Westminster at 10 p. m. by the Lord Chancellor and Miss Haldane, his sister, the Earl and Countess of Birkenhead, Viscount and Viscountess Cave, Viscount Finlay and Lord and Lady Buckmaster. Regular evening dress was expected of the Americans and Levee Dress (which means short trousers) was expected of the English and Canadians. This reception was preceded

by many private dinners at homes and the hour was arranged for that purpose. The event was supposed to conclude the official entertainment.

The Junior Constitutional Club, at 101 Piccadilly, West, issued cards of temporary membership. The English Speaking Union kept open house and seemed to enjoy the visits of a great majority of the delegation. It may be well to say that the visit to London, amongst many other things, accomplished two splendid purposes. One was a finer appreciation of the necessity for an accord amongst English speaking peoples the world over. It was amazing to hear and compare the customs and speech and dress and to observe how little difference there was between peoples living under the great common law, whatever might have been the origin of the persons. No Frenchman could differ from an Englishman than a Welchman or probably a Scotchman.

It was marvelous to listen to the English speakers disclaim exclusive ownership of Westminster Abbey and the seats of learning established by the ancient English who built up the common law and to observe how promptly the Americans laid an equal claim to these seats of the Common Law which was a common heritage. The second accomplishment was a study of the practical administration of justice through rules of court, instead of the old, rigid statutory procedure such as now exists in America. A study of the official program will show that sufficient time was provided to enable members to visit places of interest and particularly the courts. One of the most gratifying things was the number present in all of the courts. Lawyers and judges came away determined that rules of court should be instituted in America.

The question of education was not neglected. On Saturday, July 26, the party was divided and made visits to both Oxford and Cambridge. After being shown all over the grounds and amongst the buildings, lunch was served at one o'clock at the various college dining rooms. It fell to the lot of this writer to lunch at Jesus College, Oxford, where he was shown the room occupied by John Richard Green, author of the famous work, "History of The English People." His chamber consisted of a lounge room about 7x10 with no heat except a small blaze which might be started in an improvised fire place. He slept in a small alcove adjoining in which there was neither fire nor hot water. The hardships undergone by students of Green's day made men, instead of milksops and impressed American lawyers as being helpful instead of harmful.

Several hundred lawyers left for Paris and the Continent on Saturday with the anticipation of enjoying the hospitality of the French Bar on Monday, Tuesday and Wednesday. There is not space enough to go into particulars. Neither can particulars be furnished with reference to the entertainment furnished by the Scotch Bar at Edinburgh on Monday, the 29th, or the Irish meeting at Dublin on the 30th and 31st. Those who went were enthusiastic over their reception. The journey to Dublin was made difficult by the distance and the intervening channel. The historic City of Edinburgh, where lived Mary, Queen of Scots, held much of interest. The whole East Coast was marked with interesting spots running back into history even antedating the birth of Christ. It is difficult for the mind of the American, in studying history intimately connected with himself and the growth of his people, to realize that this country was in existence even before the Christian Era. It is a fact these scenes did much to emphasize the evolution through the centuries that fructified into Anglo-Saxon civilization. Never so well before did the American lawyer realize that civilization is not a matter of a day, a month or a year, but of centuries. It has enabled them to value the common law.

GENERAL WELFARE AND THE RIGHTS OF INDIVIDUALS

By Everett P. Wheeler

The Constitution of the United States is Federal in its character. When it was first proposed for adoption objection was made by many that it contained few clauses protecting the rights of the individual. Accordingly the advocates of the Constitution agreed upon the first ten Amendments, and it was distinctly understood and agreed that they should be proposed as an addition to the Constitution and should form a Bill of Rights to protect the rights of individual citizens. They were unanimously adopted. It is no doubt true that the preamble to the Constitution declares it is ordained to promote the general welfare. But it was ordained to promote the general welfare upon a particular method. There was a Russian plan; there was a Prussian plan. Both were centralization. We chose the American plan of local self-government. The framers of the constitution were clear that this general welfare could best be promoted by leaving to each State the regulation of local matters. To secure this right of local legislation the Tenth Amendment was adopted. "Article X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

It is true, as Wayne B. Wheeler says in the article which you printed in a recent issue of the Central Law Journal, that the Eighteenth Amendment is a modification of this principle. But the history of this Amendment shows that the modification was not an improvement. No legislation has ever produced such a crop of crime. In the statement published by Director Haynes in the New York Times of July 8th, 1923, he described "The inside rule of Prohibition." It has produced, according to him, "bribes of millions," "moonshine battles," "bootleg murders," "tales of rum-running," "international plots" and "bottle deaths."

Our great jurist, James C. Carter, said long ago:

"Who does not know that the ultimate support upon which all laws must rest is public opinion? And what is this but saying that law, in order to be obeyed and enforced must accord with the public standard of justice."

The fact is that there are many great centers of population in this country in which before the Volstead Act the majority of the people used wine and beer in moderation and were benefited by its use. The attempt under pretense of promoting the general welfare to deprive millions of persons of this innocent enjoyment, they resent. It may be, as Wayne B. Wheeler says, that it has been done by the majority of people in the whole country—but that does not make it easier for the minority to bear. They are living in a country the elementary principle of whose Constitution is that the majority have no absolute power and that there are certain rights of the individual which the majority are bound to respect.

A person who cares little for the rights of American citizens naturally is regardless of the rights of other nations. The Volstead Act prohibits a commerce which had existed for centuries, and which was very beneficial to the citizens of other nations. The wine growers of France and Germany had been selling us good Claret, good Sauterne, good Rhine wine, and taken American goods in payment, to our mutual advantage. As long ago as the year 1799—the Supreme Court of New York in Seton v. Low—(1 Johnson 1) held that "contraband goods were lawful goods, and that whatever is not prohibited to be exported by the positive law of the country is lawful."

"The right of the hostile power was," as this same very moral and great writer (Vattel) continues, "to observe this and

not destroy the right of the neutral to export." More than over a century later, Dr. Lushington laid down the same rule in the high court of Admiralty—The Helen—Law Reports—1 Ad, and Ec. 1—. He declares expressly "The law of nations has never declared that the neutral State is bound to impede or diminish his own trade by municipal restriction."* Advocates of the Volstead Law have been ready to condemn the foreign subjects who have not been willing to co-operate in its enforcement. They forget that the trade which they are trying to suppress is lawful for the foreigner, who is not bound by the Act of American Congress, and he naturally resents the attempt of that Congress to destroy his manufacture and his trade. It certainly was an unfriendly act to prohibit foreign ships from bringing supplies for their crew into the ports of the United States. Far better would it have been had we adhered to the old rule that the nationality of the ship continued after she entered our ports, and that our local sumptuary laws should not be applied there.

It is very remarkable that the zeal that is shown to extend the jurisdiction of the Federal government in matters of local regulation under color of promoting the general welfare ignores the experience of all other nations. It is a part of that offensive conceit which some Americans exhibit. All over the continent of Europe the system of centralized government has broken down. The old Empires have been divided. Bohemia is no longer governed from Vienna. The British attempt to govern Ireland from Westminster has failed, and the Irish have a parliament of their own to their great advantage, and to the great advantage of England.

The fallacy of the Volstead argument is contained in one sentence: "We are more insistent on our rights as citizens of the American Republic than on our other rights as taxpayers in the Village of Four Corners." What the Volstead Act does is to give the citizens of a thousand villages of Four Corners the controlling voice in the domestic affairs of the cities of Boston, New York, Philadelphia and St. Louis. To that we naturally object. No one proposes to prevent the citizens of Four Corners from regulating their local beverage traffic. If they do not know the difference between good claret and bad whiskey, we are sorry for them, but acknowledge their right to local self-government. What we object to is their control of those who do know the difference and want to have the claret!!

Another point in reference to which Wayne B. Wheeler is misinformed is in his statement "We have driven the beverage-intoxicant trade from 95 per cent of the territory of the Nation." There were statutes against the beverage-intoxicant trade in States containing a large proportion of the American territory, though not so large as he claims. But in these States there were many who "wanted the prohibited beverages"—and got them. Wayne Wheeler himself admits this, but fails to recognize that the only reason why the traffic continued was because so many citizens wanted the beverage. The Volstead Act has not changed human desires by making prohibition universal; it has simply put a premium on the trade in illicit liquor and has deprived the taxpayers of a revenue which was willingly paid of at least five hundred million dollars a year.

It is natural that the same person who is so zealous to deprive millions of his fellow-citizens of innocent enjoyment should be so keen in advocating the so-called Child Labor Amendment. This, equally, under the color of a plausible name, contains a falsehood. Young men and women from 14 to 17 are not children No wise parent will treat them as such. If they find that the schooling offered them is not congenial, or if by sickness or death they

*These decisions are furnished in Evans Cases International Law, pp. 446-452. See 3 Kent, — 267.

are deprived of the support of their parents, they ought to have the right to earn an honest living. The law which prohibits this pauperizes them—or worse. A recent report of the Surgeon-General contains a serious warning. He says:

"In order that we may see clearly the service rendered in the interest of the public health by the National Florence Crittenten Missions, it will be advantageous to consider briefly the work done by this organization in the past. During the last 42 years thousands of young women from all classes of society the *largest number being between 16 and 18 years of age,* have been provided not alone with maternity care, but also the necessary attention and assistance for a period preceding the birth of the child and shelter and care during a considerable portion of the bursing period."

If a girl of the age mentioned will not go to school and the law prevents her from earning an honest living, she becomes the prey of panders.

The proposition to prohibit honest industry is not a high standard for the "protection of youth." It would pauperize and destroy it. Jacob Schoenhof shows long ago in his great book, "The Economy of High Wages," that the lowest wages are not the most productive. Those who are actually experienced in manufacturing are well aware of this. It is the skill and strength that count. The factory of a State which permits the employment in factories of children under 14—if there is any such State, which, in fact, there is not—is not thereby placed at an advantage. It is not thereby enabled to compete successfully with a factory employing skilled labor.

In Mr. Davis's speech on Labor Day he states a proposition which we should all take to heart. "The first duty before the American people is to preserve equality of opportunity. We do not want men and women in this country to remain tied to the stations which their fathers occupied."

On the same day we fined the record of Henry J. Case, of New York, who began work as a boy firing a wood-burning locomotive. He worked his way up; became an inventor of harvesters, gained a fortune, and died in his 85th year. A law which would have denied to him as a boy the opportunity to earn his own living and make his own start in life, would have been wicked and stupid as well.

Such instances are innumerable in American history.

Some thirty years ago our great historian, John Fiske, warned us:

If the day should arrive (which God forbid!), when the people of the different parts of the country shall allow their local affairs to be administered by prefects sent from Washington, and when the self-government of the States shall have been so far lost as that of the departments of France, or even so far as that of the counties of England, on that day the progressive political career of the American people will have come to an end, and the hopes that have been built upon it for the future happiness and prosperity of mankind will be wrecked forever.

The danger he foresaw is now upon us.

DAMAGES—MEASURE IN FOREIGN EXCHANGE

DANTE v. MINIGGIO

298 Fed. 845

(Court of Appeals of District of Columbia. Submitted December 5, 1923. Decided May 5, 1924.)

Where amount due plaintiff was a stated number of francs, the judgment should be computed at rate of exchange prevailing when debt fell due.

ROBB, Associate Justice. On October 12, 1909, there was due plaintiff, Miniggio, appellee here, 7,815.56 francs, for merchandise purchased from him in Paris, France, by Mrs. Hutchins, wife of Stilson Hutchins, since deceased, whose estate now is represented by the defendant, Dante, appellant here. This action

in assumpsit was instituted in September of 1921, and issue was joined therein in the following October.

(1) At the trial defendant tendered the number of francs due in 1909, with interest in francs, "and costs of suit to date." Whether these costs were tendered in francs or dollars does not appear. The court, on a special verdict of the jury, entered judgment for the plaintiff for $1,563.70, with interest thereon from October 12, 1909, and costs; this sum representing the then value of the francs in dollars. In view of the ambiguity of the record as to the tender, we are unable to say it was sufficient. As to the applicable rule in such cases, see Colby v. Reed, 99 U. S. 560, 25 L. Ed. 484; Browning, King & Co. v. Chamberlain, 210 N. Y. 270, 104 N. E. 627; Porter v. Dixie Fire Ins. Co., 107 S. C. 393, 93 S. E. 141; Levan v. Sternfeld, 55 N. J. Law, 41, 25 Atl. 854; Whiteman v. Perkins, 56 Neb. 181, 76 N. W. 547; 38 Cyc. 149.

(2) The question presented here, therefore, is whether the amount due on the judgment, which must be in terms of American money, should be computed at the rate of exchange prevailing when the debt fell due, or as of the date of the judgment. The rule adopted by the learned trial justice is supported by the weight of authority, both in this country and England. In Owners of S. S. Celia v. Owner of S. S. Volturno (1921) Law Rep. 2 App. Cases 544, 37 Law Quarterly, 38, there were cross-claims for damages, and the question was at what date ought the exchange to be fixed, in order that the damages originally assessed in lire should be converted into sterling. After an exhaustive review of the question, it was ruled that the date when the loss occurred governed. Lord Buckmaster in his opinion said:

"There are only two possible dates put forward as the dates upon which the conversion can be made, the date when the loss occurred and the date when the liability for the loss was determined."

After setting forth the contention that the judgment should be considered as divided into two parts, the one declaratory of liability determined in lire and fixed at the date when the damage was incurred, and the other as a matter of mere machinery converting the lire into sterling at the date of the judgment, the opinion continued:

"To my mind that is not he true function and purpose of the judgment. A judgment, whether for breach of contract or tort, where, as in this case, the damage is not continuing, does not proceed by determining what is the sum which, without regarding other circumstances, would at the time of the hearing afford compensation for the loss, but what was the loss actually proved to have been incurred either at the time of the breach or in consequence of the wrong. With regard to an ordinary claim for breach of contract this is plain. Assuming that the breach complained of was the non-delivery of goods according to contract, the measure of damage is the loss sustained at the time of the breach, measured by the difference between the contract price and the market price of the goods at that date."

It thus appears that the English court made no distinction between actions of contract and of tort, but ruled that in either case the judgment, if assessed in a foreign currency, must be based on the amount required to convert that currency into sterling at the date when the measure was properly made, without taking into account subsequent fluctuations of exchange. In the later case of Societe Des Hotels Du Touquet Paris Plage v. Cummings (1921), Law Reports, 3 K. B. 459, it was said:

"The authorities appear to me to show that, when judgment is given, the amount due on the judgment must be converted into English currency, but not at the rate of exchange prevailing at that date. In my view, they show that the plaintiff, being entitled to sue in an English court, can claim payment in English currency at the rate of exchange prevailing when the debt fell due."

In Hoppe v. Russo-Asiatic Bank, 235 N. Y. 37, 138 N. E. 497, the court in a per curiam opinion said:

"In an action properly brought in the courts of this state by a citizen or an alien to recover damages, liquidated or unliquidated, for breach of contract or for a tort, where primarily the plaintiff is entitled to recover a sum expressed in foreign money, in determining the amount of the judgment expressed in our currency, the rate of exchange prevailing at the date of the breach of contract or at the date of the commission of the tort is under ordinary circumstances to be applied."

Birge-Forbes Co. v. Heye, 248 Fed. 636, 160 C. C. A. 536, was a suit to recover amounts paid on the defendant's account in Germany, and the court said:

"The purpose of the judgment is to make whole the plaintiff for the amount which he paid out in discharging the obligations of his principal. The evidence failing to disclose any depreciation of the German mark at the time of this payment, the assumption should be that the value of the mark was at that time the normal value, and the judgment should be predicated upon this value."

The Supreme Court of the United States

(251 U. S. 317, 40 Sup. Ct. 160, 64 L. Ed. 286) approved "taking the value of the German mark at par in the absence of evidence that it had depreciated *at the time of the plaintiff's payments.*" (Italics ours).

Page v. Levenson (D. C.) 281 Fed. 555, was an action for breach of contract against the buyer of goods, to be delivered in France and paid for in francs. It was held that the measure of plaintiff's recovery was such a sum in dollars as would purchase the number of francs awarded at the rate of exchange current at the date of the breach. In Guinness et al. v. Miller (D. C.), 291 Fed. 769, the same rule was adopted.

While there are earlier decisions to the contrary, we regard those cited as expressing the better and more equitable rule, which we therefore adopt. In answer to the argument advanced by appellant that, had he, prior to the bringing of suit, tendered the number of francs due he would have liquidated his obligation, it already has been suggested that he did not make such a tender, so that he is solely responsible for the situation in which he now finds himself. The question has been so thoroughly considered in the cases cited that further discussion is unnecessary.

Affirmed.

NOTE—*Time for Computing Rate of Exchange in Recovery on Foreign Obligation.*—In an action brought in this country for breach of a contract to be performed abroad, the measuse of damages is the loss in English currency to the plaintiff at the time when, and the place where, the contract ought to have been performed. Where, therefore, the plaintiff, a merchant in Milan, obtained judgment against the defendants, shipping agents in London, for damages for non-delivery and conversion of goods intrusted to them for carriage to the plaintiff at Milan, it was held that the damages ought to be assessed at such a sum in sterling as would give the plaintiff the proper compensation in Italian lire at the rate of exchange prevailing on the date when the goods ought to have been delivered to the plaintiff, and not at the rate prevailing at the date of judgment. Di Ferdinando v. Simon Smits & Company, 89 L. J. K. B. N. S. 1039, 11 A. L. R. 358.

It was held in Marburg v. Marburg, 26 Md. 8, 90 Am. Dec. 84, that the amount recoverable by a resident of a European state, suing in this country for a debt payable in Europe, should be computed according to the rate of exchange at the time of the trial. A note in 11 A. L. R. 363, shows that this rule of computing the amount of recovery on the rate of exchange at the time of the trial is further supported by Capron v. Adams, 28 Md. 529; Hawes v. Woolcock, 26 Wis. 629; Robinson v. Hall, 28 How. Pr. (N. Y.) 342; Smith v. Shaw, Fed. Cas. No. 13,107.

The case of Butler v. Merchant, 27 S. W. 193, decided by the Court of Civil Appeals of Texas, holds that the rate of exchange prevailing at the time of the trial is not necessarily the proper rate in computing the amount due in foreign money. The court said that the plaintiff should not be made to lose by the failure of the defendant to repay at the proper time the money he owed.

In Revillon v. Demme, 144 Misc. 1, 185 N. Y. Supp. 443, it was held that the rate of exchange prevailing at the time of the beginning of the action should be taken in computing the amount due.

CORRESPONDENCE

15 Clark St., Brooklyn, N. Y.,
Sept. 1st, 1924.

Dear Sir:

May I call attention to the present status of the so-called Child Labor Amendment?

Out of the six States which have so far received it only one—Arkansas—(and that by a very close vote) has ratified; three, Louisiana, Georgia and North Carolina, have rejected it by nearly unanimous votes in both Houses; one, Iowa, put it over till January, and, one, Massachusetts, provided for a popular vote upon it, by means of an advisory referendum, to be held in that State at the approaching November election.

The truth is that in urging the ratification of this so-called Child Labor Amendment its propounts are supporting a constitutional revolution, whether they are aware of that fact or not.

The power sought by Congress in this proposal covers much more than Child Labor, namely, Congressional power to prohibit the labor of all youths and maidens 16 and 17 years old, not only in factories, but in the homes and on the farms as well.

This power will not be subject to judicial restraint. Such power no government in America, state or federal, has heretofore possessed. Moreover the proposal carries with it by necessary implication, under the doctrine of implied powers, Congressional control of the "education" of such persons as well as of their labor.

It would give constitutional sanction now lacking, for a National Education Bill which latter has been opposed by practically every leading educator in this country.

These are grave and serious considerations which deserve careful debate and discussion by the candidates for the legislature to be elected in many States in November who in January next will pass upon this proposal on behalf of their respective States.

GEO. STEWART BROWN.

DIGEST.

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Adoption**—Domicile.—Const. U. S. art. 4, § 2, and Amend. 14, § 1, securing to non-residents all privileges and immunities of residents, do not deprive court of jurisdiction of proceedings to adopt resident minor child of non-resident parent.—In re Soderberg, Ariz., 226 Pac. 210.

2. **Animals**—Restraint of Dog.—A veterinary summoned to examine a dog that had been acting queerly did not assume the risk of injury arising from the owner's negligence in not properly restraining the dog in bringing it for examination.—Brune v. De Benedetty, Mo., 261 S. W. 930.

3. **Automobiles**—Agency.—Proof that the defendant owned the car and that it was being driven by the child of the defendant, with his consent, at the time of the accident, is not sufficient to raise the presumption that the child was acting as the agent of the father and within the scope of his authority, thereby shifting the burden upon the father to prove the contrary. To do this would require the court to enforce one presumption upon another, to-wit: (1) That the son was the agent of the father; and (2) that the agent was acting within the scope of his authority. A presumption must be based upon an evidentiary fact and not upon another presumption. Before the negligence of the child will be imputed to the father, it is necessary to prove that the father was the owner of the car and that the relation of master and servant existed between the child and the parent, which proof raises a presumption that, at the time of the accident, the driver was acting for the parent and within the scope of his authority.—Vandervort v. Wilson, Okla., 226 Pac. 65.

4.——Headlights.—One driving an automobile on a dark foggy night, with headlights dimmed below requirements of St. 1921, §§ 1636—52a, subd. 2, though not bound to anticipate presence of a loaded freight car projecting partially across street intersection, was contributorily negligent in colliding with it.—Yano v. Stott Briquet Co., Wis., 199 N. W. 48.

5.——Signals.—That truck striking pedestrian from rear was loaded with empty cans, which made considerable noise, and was equipped with lights, held insufficient compliance with requirement of Motor Vehicle Act 1915, § 12, then in force, that driver sound horn or give other signal of vehicle's approach.—Devcchio v. Ricketts, Calif., 226 Pac. 11.

6. **Bailment**—Loss by Fire.—Where plaintiff sues a garage operator for failure to return or deliver his automobile, which was placed in the care, custody, and control of the operator for hire, and the garage operator answers by alleging that at the time the automobile was placed in defendant's garage there was posted in the garage in plain view, a large sign that defendant would not be liable for destruction by fire, and that plaintiff was notified at the time of placing his automobile in the garage that the operator thereof would not be liable for the destruction of the automobile by fire, and that the plaintiff assumed the risk of destruction by fire; such allegations do not state a defense, as the law does not permit a bailee for hire, by giving notice or by contract, to limit his liability to a less degree of care than ordinary care; and, under the circumstances presented here, it was not error to sustain a demurrer to such alleged defense.—Scott Auto & Supply Co. v. McQueen, Okla., 226 Pac. 372.

7. **Bankruptcy**—Alimony.—Installment of allmony in arrears cannot be proved as a debt in bankruptcy, and is not discharged thereby.—In re Westmoreland, U. S. D. C., 298 Fed. 484.

8.——Composition.—Under Bankruptcy Act, § 57n (Comp. St. § 9641), providing that claims shall not be proved subsequent to one year after adjudication, and sections 12a, 12b, and 12e (Comp. St. § 9596), relating to compositions, creditor who failed to prove his claim within the year may share in composition.—Nassau S. & R. Works v. Brightwood Bronze Foundry Co., U. S. S. C., 44 Sup. Ct. 506.

9.——Lease.—Where lessor's petition for leave to re-enter on lessee's bankruptcy without terminating lease was allowed by referee, and lessor's brief insisted that lease was never terminated, lessor's claims for damages for breach of covenants to repair, to furnish steam and hot water to other tenants, to clean premises, etc., which could not arise until after termination and reentry, were properly disallowed.—M'Donnell v. Woods, U. S. C. C. A., 298 Fed. 434.

10.——Liquidated Claims.—Where suit is brought to recover payment by bankrupt as voidable preference, and entire amount paid is recovered, proof of defendant's claim must be filed within 60 days of the judgment, and not of payment of judgment, to prevent it from being barred by Bankruptcy Act, § 57n (Comp. St. § 9641); to "liquidate a claim" meaning to determine by agreement or litigation its precise amount.—In re Cook, U. S. D. C., 298 Fed. 125.

11.——Mortgage Foreclosure.—A court of bankruptcy held without right to enjoin a suit in a state court for foreclosure of a valid mortgage given by bankrupt more than a year before the bankruptcy on property which had not come into possession of the bankruptcy court, especially where the mortgage security was being depleted by the operation of oil and gas wells on the property, and to preserve it a receiver had been appointed by the state court.—Ft. Dearborn Trust & Savings Bank v. Smalley, U. S. C. C. A., 298 Fed. 45.

12.——Partners.—Ordinarily partners cannot prove debts claimed to be due to them individually from the partnership in the administration of the partnership estate.—In re Wells, U. S. D. C., 298 Fed. 109.

13.——Trust Account.—Where certified check given to stockbrokers to purchase securities was deposited to broker's credit in bank on same day that bankruptcy petition was filed, and brokers' bank balance at close of day's business was due entirely to such check, customer held entitled to impress trust on such balance.—In re Shapiro Bros., U. S. D. C., 298 Fed. 196.

14.——Trustee.—Where a trustee had qualified and served for more than a year, the court was without jurisdiction to remove it without the notice or hearing required by Bankruptcy Act, § 2 (17), being Comp. St. § 9586.—In re Judith Gap Commercial Co., U. S. C. C. A., 298 Fed. 89.

15. **Banks and Banking**—Deposits.—Where a bank in good faith receives negotiable paper from a customer and, in place of paying the money over the counter at the time the notes are negotiated, issues to him a certificate of deposit payable at a future date, no fraud or collusion being shown, the legal effect is the same as if the money itself had actually been placed upon deposit, and, as respects the bank guaranty fund, the deposit evidenced by the certificate so issued stands upon the same footing as any other deposit.—State v. American State Bank, Neb., 199 N. W. 21.

16.——Forged Check.—In action by depositor to recover money withdrawn by forged check and improperly charged to plaintiff, burden of proof was on defendant to show plaintiff was guilty of such negligence as to preclude recovery.—Grow v. Prudential Trust Co., Mass., 144 N. E. 93.

17.——Interest.—Where borrower took out a so-called installment investment certificate, under which weekly payments were to be made, and pledged it as security for note, bank deducted interest on loan in advance, under Banking Law, § 293, subd. 4, and note by reason of non-payment of installments became due, held that payments on certificate must be deducted from amount of note.—Morris Plan Co. of New York v. Osnato, N. Y., 204 N. Y. S. 829.

18.——Notice.—Where one as cashier and vice-president, with knowledge and acquiescence of directors of bank, attended to renting of rooms, bank and its vendee were estopped from denying validity of particular leases for want of authority.—Hall-Watson Furniture Co. v. Cumberland Tel. & Tel. Co., Ky., 261 S. W. 883.

19.——Officers.—Bank could not claim to injustice of another, that cashier or other officer of bank had no authority to bind funds of bank to pay obligations in which he was personally interested, where through long period of time bank has acquiesced in permitting such authority to be exercised.—Jenkins v. Nicolas, Utah, 226 Pac. 177.

20. **Bills and Notes**—Corporations.—Where the name of a corporation as maker of a note is attached by the defendant, who also indorsed the note, the defendant is liable as an indorser of the note under section 7734, C. S. 1921, whether the name of the corporation was signed with or without authority.—Milburn v. Miners' & Citizens' Bank, Okla., 226 Pac. 42.

21.——Without Recourse.—Where the original payee of a note, although it may be negotiable in form, after maturity assigns it "without recourse," such instrument is not thereby negotiated or put in circulation as a negotiable instrument, and does not thereby become a negotiable instrument, and the obligations arising out of such transfer are not governed by the Negotiable Instruments Law.—Moody v. Morris-Roberts Co., Idaho, 226 Pac. 278.

22. **Carriers**—Containers.—In action against terminal carrier for loss of castor oil shipped in 1918 in wooden barrels, court properly excluded evidence that in 1923 practice was to use metal containers, and that they were considered better than wood.—Northern Industrial Chemical Co. v. Davis, Mass., 144 N. E. 64.

23.——Free Transportation.—One who is transported over the line of a railroad company by virtue of a gratuitous pass, providing by its terms that "the person accepting and using it thereby assumes all risk of accident to person or property," is not entitled as of legal right to any degree of diligence at the hands of the company or its servants, and the company is not liable for an injury to him because of mere negligence, though gross; the parties having, as they were free to do, provided otherwise by their contract. The company cannot be held liable in such case unless the injury was inflicted wilfully or wantonly.—Lanier v. Bugg, Ga., 123 S. E. 145.

24.——Joint Rates.—In determining divisions of joint rates, the Interstate Commerce Commission may in the public interest consider the financial needs of a weaker road, and give a division larger than justice merely as between the parties would suggest, in order to maintain it in effective operation as part of an adequate transportation system, provided the share left to its connections is adequate to avoid a confiscatory result.—United States v. Abilene & S. Ry. Co., U. S. S. C., 44 Sup. Ct. 565.

25.——Tariff Value.—Where tariff rate for shipping of carload of horses valued at $100 each was $165, and contract recited that value and that rate was paid, though horses were known to carrier's agent to be race horses of a much greater value, and shipper did not know of valuation until after loss, held that, under first Cummins Amendment (Act March 4, 1915, § 1 [Comp. St. § 8604a]), carrier was liable for full actual loss.—Adams Express Co. v. Darden, U. S. S. C., 44 Sup. Ct. 502.

26. **Chattel Mortgages**—Expenses.—Where a chattel mortgage carries a provision that "out of the proceeds retain the amount then owing on said note, together with the expense attending the taking and selling of said property," the words, "expenses attending the taking and selling of said property," refer to court expense and such other expense as may be incurred in an action for possession of the property, and such expense as is incurred in advertising and selling the property according to the provisions of the mortgage or as provided by law.—Simpson v. Butts, Okla., 226 Pac. 332.

27. **Commerce**—Baggage.—Shipment of trunk from Pittsburgh, Pa., to San Antonio, and from there to San Diego, Tex., over another railroad, held an interstate shipment, to which rule 10 of United States Railroad Administration baggage tariff No. 25—2 limiting liability for loss of baggage, applied, though owner bought another ticket and had trunk rechecked at San Antonio.—Nast v. San Antonio, U. & G. Ry. Co., Tex., 261 S. W. 1011.

28.——Carrier by Railroad.—American Railway Express Company held not a "carrier by railroad," within Interstate Commerce Act, § 15, par. 3, as amended by Transportation Act 1920, § 418 (Comp. St. Ann. Supp. 1923, § 8583), prohibiting Commission from requiring carrier by railroad to embrace in a route substantially less than entire length of railroad.—United States v. American Ry. Express Co., U. S. S. C., 44 Sup. Ct. 560.

29.——No Peddlers.—Application of city ordinance, imposing penalties on peddlers and solicitors calling at dwellings bearing the sign "No Peddlers," to non-resident solicitors for orders to be filled through interstate commerce, held an unwarranted interference with interstate commerce, and deprivation of liberty of contract and of property without due process of law.—Real Silk Hosiery Mills v. City of Richmond, Cal., U. S. D. C., 298 Fed. 126.

30.——State Railroad.—The State Belt Railroad, traversing San Francisco harbor front and belonging to state, held a "common carrier," engaged in "interstate commerce," where it served all carrier routes and moved freight in loaded cars for shipment of goods in interstate commerce, though it issued no bills of lading, receipts, or invoices, and simply rendered switching services at a certain rate per car, and it must comply with federal Safety Appliance Act March 2, 1893 (Comp. St. §§ 8605-8612).—M'Callum v. United States, U. S. C. C. A., 298 Fed. 373.

31. **Conspiracy**—Purpose.—Where primary purpose of boycott is to do irreparable injury to plaintiff, unless it conducts its business as defendants demand, and defendants singled out plaintiff for punishment from all others in the same class, boycott is unlawful; but, if primary purpose is to better condition of boycotters as laborers, and not to do irreparable injury, boycott is lawful.—Overseas Storage Co. v. Chlopsek, N. Y., 204 N. Y. S. 845.

32. **Constitutional Law**—Free Transportation.—Anti-Pass Law (Acts 1907, c. 42, § 2, as amended by Acts 1911, c. 83 [Vernon's Ann. Pen. Code 1916, art. 1533]), enacted under authority of Const. art. 10, § 2, held not arbitrary in classification of persons entitled to free or reduced transportation because it grants free passes to certain public officials and it is common knowledge that public interest is subserved by meetings of religious and charitable workers and by industrial fairs, and that many in need of service rendered by such meetings could not attend if payment was to be made of full passenger fares.—St. Louis Southwestern Ry. Co. v. State, Tex., 261 S. W. 996.

33.——Suffrage.—The provision of Rev. St. Tex. art, 3093a, as added by Acts 38th Leg. 2d Called Sess. (1923), c. 32, § 1, prohibiting negroes from voting at Democratic primary elections, held within the police powers of the state, and not in violation of the Fourteenth or Fifteenth Amendment.—Chandler v. Neff, U. S. D. C., 298 Fed. 515.

34.—Suffrage.—A primary of a political party is not an election, and the right of a citizen to vote therein is not within those protected by the Fourteenth and Fifteenth Amendments.—Chandler v. Neff, U. S. D. C., 298 Fed. 515.

35.——Permits.—Refusal of board of directors of street and sewer department of city of Wilmington to issue new permits for operation of motor busses in streets to one who had refused or neg-

lected to observe regulations, notwithstanding repeated warnings, and who was convicted of violating regulation as to adequate brakes within period of grace allowed after expiration of former permits, held justified; discretion based on personal qualifications of applicant not being offensive to Fourteenth Amendment.—Cutrona v. Mayor and Council, Del., 124 Atl. 658.

36.——Taxes.—Assessment for street improvements under Gen. Code Ohio, § 3819, held not violative of due process clause of Const. Amend. 14, for failure of statute to provide for notice to owner and for opportunity to be heard before levy of tax, in view of section 12075, giving the court of common pleas and the superior court jurisdiction to enjoin illegal levy for collection of taxes and assessments and to recover them back when collected.—Hetrick v. Village of Lindsey, Ohio, U. S. S. C., 44 Sup. Ct. 486.

37. **Contracts**—Fraud.—Fraudulent representations, resulting in material injury, furnish ground for rescission of a contract, without regard to the actual extent of the pecuniary damage suffered.—Wright v. Spencer, Idaho, 226 Pac. 173.

38.——Motion Picture.—Contract between distributor and motion picture theater to receive and pay for films, pictures delivered "to be used solely by the exhibitor for exhibition and for no other purpose," did not require theater to exhibit pictures after having received them.—Vitagraph v. Park Theatre Co., Mass., 144 N. E. 85.

39.——Right to Cancel.—Promisor's right to cancel "satisfaction contract" may depend entirely on his whim or caprice, though question is one of operative fitness or mechanical utility, rather than fancy, taste, sensibility or judgment.—Hall v. Webb., Calif., 226 Pac. 403.

40. **Corporations**—Crime.—An indictment, charging a corporation with a crime which is punishable only by imprisonment, is not good because of the impossibility of inflicting such punishment.—State v. Truax, Wash., 226 Pac. 259.

41.——Dividends.—Though stock dividends are not strictly income, declaration of such divdends is prima facie evidence that profits have been earned, which in judgment of directors should no longer remain in a surplus or profits account.—Bourne v. Bourne, N. Y., 204 N. Y. S. 866.

42.——Stock Subscriber.—When a subscriber to the capital stock of a corporation pays therefor, or pays part of the subscription price thereof, and tenders the balance to the corporation, which refuses to accept such tender, and refuses to issue to him a certificate for the shares subscribed for by him, such subscriber may sue in equity for specific performance of the contract, or he may treat the contract as repudiated by the corporation and sue for damages for its breach, or he may treat the contract as rescinded and sue for the money paid by him on his subscription.—De Lamar v. Fidelity Loan & Investment Co., Ga., 123 S. E. 116.

43.——Subscriber's Contract.—In action on notes given for corporate stock where defendant alleged and proved false representation by agent of corporation inducing purchase, judgment for him was warranted notwithstanding a provision in the subscriber's contract that no agent other than president of company should have power to change terms thereof, and that no condition other than contained therein should be binding.—Timbers v. Mitchell, Colo., 226 Pac. 149.

44. **Electricity**—Right of Way.—Permits granted by Secretary of the Interior to construct and maintain an electric power transmission line and a telephone line, used only in connection with maintenance of power line across Indian reservation, under Act Feb. 15, 1901 (Comp. St. § 4946), were not terminated by issuance of patents, not containing a reservation of prior permits, to persons who had made homestead filings on the land, though Act March 3, 1901, § 3 (Comp. St. § 4191), relating to right of way for construction of telephone lines, does not apply.—Swendig v. Washington Water Power Co., U. S. S. C., 44 Sup. Ct. 496.

45.——Unnecessary Current.—In action for injuries against electric company, evidence that plaintiff, while using an electric iron for pressing purpose in a theater, received a severe electric shock indicating the flow of an unnecessary and dangerous current of electricity into the theater was sufficient under doctrine of res ipsa loquitur to go to jury.—McAllister v. Pryor, N. C., 123 S. E. 92.

46. **Habeas Corpus**—Res Judica.—The doctrine of res judicata does not apply to a refusal to discharge a prisoner on habeas corpus, but under Rev. St. § 761 (Comp. St. § 1289), each application is to be disposed of in the exercise of a sound discretion, guided and controlled by consideration of whatever has a rational bearing on the propriety of the discharge sought, including a prior refusal to discharge on a like application.—Salinger v. Loisel, U. S. S. C., 44 Sup. Ct. 519.

47. **Insurance**—Accident.—Under accident policy indemnifying against losses from injury wholly disabling insured "from date of accident," insured could not recover for total disability caused by blood poisoning developing three days after such date, which is day on which accident occurs.—Southern Surety Co. v. Penzel, Ark., 261 S. W. 920.

48.——Army and Navy Service.—Where the insured entered the service of the army of the United States and there is a provision in the policy exempting the insurer from liability under a clause providing, in effect, "that death while in the service of the army or navy of any government in time of war is not a risk covered" by the policy, and it appears from the record that the insured died in a military camp in the state of Indiana of influenza or "flu" and it is agreed by the parties to the action that influenza was then epidemic and prevalent in the United States and was common to both civil and military life and where the evidence does not show that the insured died as the result of his military service nor that his military service contributed to his death, held that the insurer was not exempt from liability.—Illinois Bankers' Life Ass'n v. Davaney, Okla., 226 Pac. 101.

49.——Change of Occupation.—Under accident policy insuring one as principal of schools, and providing for diminished recovery in case of injury after "change of occupation" to one classified as more hazardous, but excepting injuries while engaged in recreation, held that employment of insured during his vacation as forest ranger at regular salary was not recreational and constituted change of occupation within policy.—Goodell v. Northwestern Mut. Acc. Ass'n, Wash., 226 Pac. 266.

50.——Fire.—Where insured shot policemen, and his house was surrounded, and after he had secretly left sheriff ordered deputies to fire into building, which set it afire, loss was not result of insured's own voluntary and wrongful act, so as to relieve insurer from liability under fire policy.—Rhode Island Ins. Co. v. Fallis, Ky., 261 S. W. 892.

51.——Indemnity.—Where, on application for bond on behalf of cashier, plaintiff stated that no other person than applicant would handle funds except the general manager, evidence that others received funds though not as cashier held to invalidate bond.—Aetna Casualty & Surety Co. v. Finance Service Corp., Colo., 226 Pac. 153.

52.——Insurable Interest.—A corporation had an insurable interest in the life of its president, who was a man of ability, energy and initiative, and whose management of the corporation had brought an increase in its earnings.—United States v. Supplee-Biddle Hardware Co., U. S. S. C., 44 Sup. Ct. 547.

53.——Proof of Loss.—Mere overvaluation of proofs of loss is not conclusive that fraud has been committed, but it is necessary to go further and show misstatements were made knowingly and with intent to defraud insurer concerning some matter material to insurance.—Wiesman v. American Ins. Co., Wis., 199 N. W. 55.

54.——Subrogation.—One who, after recovery from an insurance company for damages to his truck in collision with train, released railroad company, held liable to insurer for loss of its rights by subrogation, though claim against railroad included matters other than mere damage to truck.—Illinois Automobile Ins. Exch. v. Braun, Pa., 124 Atl. 691.

55. **Intoxicating Liquors**—Prescriptions.—Ordinance prohibiting filing of prescriptions calling for more than eight ounces of alcoholic liquor held not in conflict with Const. Amend. 18, and National Prohibition Act (Comp. St. Ann. Supp. 1923, § 10138¼ et seq.—Hixson v. Oakes, U. S. S. C., 44 Sup. Ct. 514.

56. **Master and Servant**—Bonus.—An agreement in January to pay employee a bonus of 15 per cent on his year's pay, payable on Saturday before Christmas, was founded on good consideration.—Zampatella v. Thomson-Crooker Shoe Co. Harrington v. Same. Shaft v. Same., Mass., 144 N. E. 82.

57.——Independent Act.—Where an express messenger, in demonstrating to a friend a pistol he was required to carry, shot a passenger while the train was standing at the station, held that the messenger was acting without the line and scope of his authority, and express company was not liable.—American Ry. Express Co. v. Tait, Ala., 100 So. 328.

58.——Yardmaster.—Yardmasters, who had general direction of all train movements within yard limits and used telephone therefor, as part of their usual duties, are "employees" delivering orders pertaining to train movements, within Act March 4, 1907, § 2 (Comp. St. § 8678), limiting hours of service.—United States v. Atchison, T. & S. F. Ry. Co., U. S. D. C., 298 Fed. 549.

59. **Monopolies**—Poultry Dealers.—An association which included the greater number of wholesale dealers in poultry in New York City, through a price committee, daily fixed the price to be paid for live poultry to the commission, who received and sold the same as agents of the shippers, the shipments being largely interstate, and the price so fixed made the New York market quotation for that day, which had an influence on other markets. The association also undertook to boycott commission men who did not sell at the price fixed, or who sold to members who did not conform to the rules of the association as to resale prices, or to other wholesalers of whom the association did not approve. Held that such acts were direct restrictions on competition in interstate commerce and the association a "combination in restraint of interstate commerce," in violation of Sherman Anti-Trust Act, § 1 (Comp. St. § 8820).—United States v. Live Poultry Dealers' Protective Ass'n, U. S. D. C., 298 Fed. 139.

60. **Municipal Corporations**—Government Property.—Land of United States Housing Corporation created under Act Cong. May 16, 1918 (U. S. Comp. St. 1918, U. S. Comp. St. Ann. Supp. 1919, § 3115 5/6a et seq.), and Act Cong. June 4, 1918, is liable for its proportionate cost of paving, although street was paved nearly two years after conclusion of war; Act March 21, 1922 (U. S. Comp. St. Ann. Supp. 1923, § 3115 5/6e), providing that government agencies shall be required to pay for non-constractual utilities which benefit government property.—City of Philadelphia v. United States Housing Corp., Pa., 124 Atl. 669

61.——License.—Ordinance providing for regulation and licensing of electricians held to devolve on examining committee duty to ascertain what is reasonably necessary to constitute proper qualifications for license, and in determining such qualifications committee acts in administrative capacity, and power delegated is not legislative.—City of Milwaukee v. Rissling, Wis., 199 N. W. 61.

62.——Nuisance.—An action for damages to property caused by disagreeable odors resulting from negligent installation and management of an incinerator may be maintained against a city, though there is no statute authorizing it.—Kneece v. City of Columbia, S. C., 123 S. E. 100.

63. **Negligence**—Trespassers.—Where landlord allowed defendant's discarded machines to be placed in tenement house yard, in which tenants' children were permitted to play, such children were not trespassers in climbing thereon.—Sarapin v. S. & S. Corrugated Paper Mach. Co., N. Y., 204 N. Y. S. 778.

64.——Wanton Injury.—"Wanton injury" is legal and moral equivalent of "intentional injury," but their elements are different and proof of one would not suffice for proof of other.—Alabama Great Southern R. Co. v. Ensley Transfer & S. Co., Ala., 100 So. 342.

65. **Railroads** — Crossings.—Administratrix of paper vendor mingling with prospective passengers waiting for train at a railroad grade crossing, thrown by a frightened horse in front of a train and killed, cannot recover on the ground that crossing should have been protected by gates, there being a flagman on duty at the time, and deceased at most being a licensee, entitled only to notice of danger.—Locke v. Payne, N. H., 124 Atl. 668.

66.——Railway Income.—A company not incorporated as a carrier, but to manufacture, rent, and sell cars, and owning no railroad lines, held not a "carrier by railroad," within Transportation Act 1920, § 209 (Comp. St. Ann. Supp. 1923, § 10071¼ dd), guaranteeing a minimum "railway operating income" to such carriers for a six-months' period.—United States v. Interstate Commerce Commission, U. S. S. C., 44 Sup. Ct. 558.

67. **Receivers**—Rent.—If receiver for planting company which had leased plantation had elected not to assume lease, lessor would have claim for damages against corporation as ordinary creditor, but, if he had elected to operate plantation for full term, claim for rent for whole of term could be charged against receiver as such.—Jacob v. Roussel, La., 100 So. 295.

68. **Sales**—Seed.—Section 3793, Comp. St. 1921, renders persons selling faulty or defective seed for agricultural planting purposes liable for such damages as the purchaser may sustain by reason of the sale of such seed whether there has been a compliance by the vendor with the other provision of article 11, c. 20, Compiled Statutes 1921, or not.—Geren v. Courts Trading Co., Okla., 226 Pac. 369.

69.——Time.—Where a corporation engaged in buying railroad cross-ties gives an order for ties—from 6,000 to 10,000—deliverable "as soon as possible" to a manufacturer of such ties, the manufacturer, being the first party called upon to perform, has the option to furnish the full number or the minimum number. The words "as soon as possible" mean within a reasonable time according to all the circumstances, and, where the buyer is in default in inspecting the ties and asks for indulgence after the expiration of 90 days from the date of contract, it cannot insist thereafter that 90 days was the limit for completing the contract, and a decree so finding under the circumstances stated in the opinion will be reversed.—Ingram Day Lumber Co. v. Germain Co., Miss., 100 So. 281.

70. **Searches and Seizures**—Liquor.—Capture of intoxicating liquor found in automobile at time of occupant's arrest by search and seizure of her effects without warrant, is violation of occupant's rights under Const. art. 1, § 11 (Burns' Ann. St. 1914, § 56).—Batts v. State, Ind., 144 N. E. 23.

71. **Wills**—Distinguished From Conveyances.—If an instrument, although it has the formalities of a deed and is acknowledged and recorded as such, attempts to reserve a life estate to the grantor and convey the remainder to the grantee, but provides that such remainder estate shall not take effect until after the death of the grantor, such an instrument is a will and not a deed, and failing of proper attestation according to the statute of wills is void.—Knight v. Knight, Miss., 97 So. 481.

72.——Mental Capacity.—In a will contest on the ground of testamentary incapacity, refusal to permit a physician, who had heard all the testimony, to say whether he could base an opinion as to testatrix's mental condition on the facts testified to, though erroneous, in view of the fact that he was not asked what this condition was, was not prejudicial.—Daugherty v. Robinson, Md., 122 Atl. 124.

73. **Workmen's Compensation** — Departure.—Disobedience of a positive order as to the place where work is to be performed, resulting in injury to the servant arising out of the place selected by him, constitutes a departure from his employment, and such injury cannot be said to "arise out of and in the course of" his employment within the meaning of the Employers' Liability Law.—Hibberd v. Hughey, Neb., 194 N. W. 859.

74.——Departure.—Where claimant was laid off for the day about 11:30 in the morning, but remained at the plant, had his lunch there, and was injured about 1:50 in the afternoon, as he was making preparations for washing himself, the injury did not arise "in the course of his employment," within the Workmen's Compensation Law.—Adams v. Uvalde Asphalt Paving Co., N. Y., 200 N. Y. S. 886.